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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95646; File No. SR-NYSEAMER-2022-36]

Self-Regulatory Organizations; NYSE American, LLC.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt New Rules 997NY, 997.1NY, 997.2NY and 997.3NY and Delete Paragraph (d) to Rule 957NY

August 31, 2022

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on August 23, 2022, NYSE American, LLC ("NYSE American" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Rules 997NY, 997.1NY, 997.2NY and 997.3NY regarding certain position transfers, including off-floor transfers. The Exchange also proposes to delete paragraph (d) to Rule 957NY (Reporting Duties). The

1 15 U.S.C.78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to adopt new Rules 997NY, 997.1NY, 997.2NY, and 997.3NY regarding certain position transfers, including off-floor transfers as described herein. The proposed rules are substantively identical to rules on other options exchanges and would align the Exchanges rules with that of its competitors.[4] This proposal would benefit investors by reducing the administrative burden of determining whether their transfers comply with multiple sets of options exchange rules. In addition, the Exchange proposes to delete paragraph (d) to Rule 957NY (Reporting Duties) for reason set forth below.

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4 See e.g., Cboe Options Exchange, Inc. ("Cboe") Rule 5.12 (Transactions Off the Exchange); Cboe Rule 6.7 (Off-Floor Transfer of Positions); Cboe Rule 6.8 (Off-Floor RWA Transfers); and NYSE Arca Rule 6.78A-O (In-Kind Exchange of Options Positions and ETF Shares and UIT Units) and Cboe Rule 6.9 (same).

Proposed Rule 997NY: Transactions Off the Exchange

Rules 19c-1 and 19c-3 under the Securities Exchange Act of 1934 (the "Act") describe rule provisions that each national securities change must include in its Rules regarding the ability of members to engage in transactions off an exchange. While the Exchange's rules, stated policies, and practices are consistent with these provisions of the Act, the Exchange Rules do not currently include these provisions. Therefore, the proposed rule change adopts these provisions in new Rule 997NY, "Transactions Off the Exchange," in accordance with Rules 19c-1 and 19c-3 under the Act. Proposed Rule 997NY is also substantively identical to the off-floor transactions rule of another options exchange and thus would align Exchange rules with those of its competitors.[5]

Proposed Rule 997NY(a) provides that except as otherwise provided by this proposed Rule, no ATP Holder[6] acting as principal or agent may effect transactions in any class of option contracts listed on the Exchange for a premium in excess of $1.00 other than (1) on the Exchange, (2) on another exchange on which such option contracts are listed and traded, or (3) in the over-the-counter market if the stock underlying the option class, or in the case of an index option, if all the component stocks of an index underlying the option class, was a National Market System security under SEC Rule 600 at the time the Exchange commenced trading in that option class, unless that ATP Holder has first attempted to execute the transaction on the floor of the Exchange and has reasonably ascertained that it may be executed at a better price off the floor.

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5 See Cboe Rule 5.12 (Transactions Off the Exchange).

6 An "ATP Holder" is a natural person, sole proprietorship, partnership, corporation, limited liability company or other organization, in good standing, that has been issued an ATP [American Trading Permit] by the Exchange. See Rule 900.2NY(5).

Proposed Rule 997NY(b) provides that, notwithstanding the provisions of paragraph (a) of this proposed Rule, an ATP Holder acting as agent may execute a customer's order off the Exchange floor with any other person (except when such ATP Holder also is acting as agent for such other person in such transaction) for the purchase or sale of an option contract listed on the Exchange.

Proposed Rule 997NY(c) provides that for each transaction in which an ATP Holder acting as principal or agent executes any purchase or sale of an option contract listed on the Exchange other than on the Exchange or on another exchange on which such option contracts are listed and traded, a record of such transaction shall be maintained by such ATP Holder and shall be available for inspection by the Exchange for a period of one year. Such record shall include the circumstances under which the transaction was executed in conformity with this Rule.

Proposed Rule 997NY(d) provides that no rule, stated policy, or practice of the Exchange may prohibit or condition, or be construed to prohibit or condition, or otherwise limit, directly or indirectly, the ability of any ATP Holder acting as agent to effect any transaction otherwise than on the Exchange with another person (except when such ATP Holder also is acting as agent for such other person in such transaction) in any equity security listed on the Exchange or to which unlisted trading privileges on the Exchange have been extended.

Proposed Rule 997NY(e) provides that no rule, stated policy, or practice of the Exchange may prohibit or condition, or be construed to prohibit, condition, or otherwise limit, directly or indirectly, the ability of any ATP Holder to effect any transaction otherwise than on the Exchange in any reported security listed and registered on the

Exchange or as to which unlisted trading privileges on the Exchange have been extended (other than a put option or call option issued by Options Clearing Corporates or OCC) which is not a covered security.[7]

Proposed Rule 997.1NY: Off-Floor Transfer of Positions

The Exchange proposes to adopt new Rule 997.1NY titled "Off-Floor Transfer of Positions," to provide a process by which ATP Holders may transfer option positions between accounts, individuals, or entities in limited circumstances without first exposing the order on the Exchange. This rule would also permit off-floor transfers upon the occurrence of significant, non-recurring events. Proposed Rule 997.1NY is substantively identical to the rules of other option exchanges regarding permissible off-floor transfers of options positions and would align Exchange rules with those of its competitors.[8]

Proposed Rule 997.1NY(a) provides that, notwithstanding proposed Rule 997NY (described above), existing positions in options listed on the Exchange of an ATP Holder, or non-ATP Holder, that are to be transferred on, from, or to the books of a Clearing Member[9] may be transferred off the Exchange (an "off-floor transfer") if the off-floor transfer involves one or more of the following events:

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7 The "Options Clearing Corporation" or "OCC" refers to The Options Clearing Corporation, a subsidiary of the Participating Exchanges. See Rule 900.2NY(55). The term "Participating Exchanges" refers to any national securities exchange that has qualified for participation in the OCC pursuant to the provisions of the Rules of the Options Clearing Corporation. See Rule 900.2NY(61).

8 See Cboe Rule 6.7 (Off-Floor Transfer of Positions). See also Nasdaq ISE LLC ("ISE") Options 6, Section 5 (Transfer of Positions); Miami Options Exchange ("MIAX") Rule 1326 (Transfer of Positions). As noted below, regarding the "presidential" exemption, Cboe Rule 6.7(f) does not explicitly include the Chief Executive Officer, which reference is included in ISE Options 6, Section 5(f); MIAX Rule 1326(f).

9 A "Clearing Member" refers to an ATP Holder that has been admitted to membership in the OCC pursuant to the provisions of the Rules of the OCC. See

- an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error;
- the transfer of positions from one account to another account where no change in ownership is involved (i.e., accounts of the same Person (as defined in Rule 15)),[10] provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements;
- the consolidation of accounts where no change in ownership is involved;
- a merger, acquisition, consolidation, or similar non-recurring transaction for a Person;
- the dissolution of a joint account in which the remaining ATP Holder assumes the positions of the joint account;
- the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions;
- positions transferred as part of an ATP Holder's capital contribution to a new joint account, partnership, or corporation;
- the donation of positions to a not-for-profit corporation;

Rule 900.2NY(11).

10 A "Person" refers to a natural person, corporation, partnership, association, joint stock company, trust, fund, or any organized group of persons whether incorporated or not. See Rule 15. The proposed transfers may only occur between the same individual or legal entity.

- the transfer of positions to a minor under the Uniform Gifts to Minors Act; or
- the transfer of positions through operation of law from death, bankruptcy, or otherwise.

The proposed rule change makes clear that the transferred positions must be on, from, or to the books of a Clearing Member. The proposed rule change states that existing positions of an ATP Holder or a non-ATP Holder may be subject to an off-floor transfer, except under specified circumstances in which a transfer may only be effected for positions of an ATP Holder.[11] The Exchange notes off-floor transfers of positions in Exchange listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations.[12] Except as explicitly provided in proposed Rule 997.1NY, the proposed rule change is not intended to exempt off-floor position transfers from any other applicable rules or regulations, and proposed paragraph (h) to Rule 997.1NY makes this clear.

Proposed Rule 997.1NY(b) provides that no position may net against another position ("netting"), and no position transfer may result in preferential margin or haircut treatment, unless otherwise permitted by proposed paragraph (f) (described below). Netting occurs when long positions and short positions in the same series "offset" against each other, leaving no position, or a reduced position. For example, if an ATP Holder wanted to transfer 100 long calls to another account that contained short calls of the same options series as well as other positions, even if the off-floor transfer is permitted

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11 See proposed Rule 997.1NY(a)(5) and (7).

12 See proposed Rule 997.1NY(h).

pursuant to one of the permissible events listed in proposed Rule 997.1NY(a)(1)-(10), the ATP Holder could not transfer the offsetting series, as they would net against each other and close the positions.

Proposed Rule 997.1NY(c) provides that the transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which an off-floor transfer may be effected is either: (1) the original trade prices of the positions that appear on the books of the trading Clearing Member, in which case the records of the off-floor transfer must indicate the original trade dates for the positions; provided, transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1) must be transferred at the correct original trade prices; (2) mark-to-market prices of the positions at the close of trading on the transfer date; (3) mark-to-market prices of the positions at the close of trading on the trade date prior to the transfer date;[13] or (4) the then-current market price of the positions at the time the transfer is effected. Proposed Rule 997.1NY(c) provides market participants that effect off-floor transfers with flexibility to select a transfer price based on the circumstances of the transfer and their business. However, for corrections of bona fide errors, because those transfers are necessary to correct processing errors that occurred at the time of the transaction, those off-floor transfers would occur at the original transaction price, as the purpose of the transfer is to create the originally intended result of the transaction.

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13 For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

Proposed Rule 997.1NY(d) requires an ATP Holder and its Clearing Member(s) (to the extent the ATP Holder is not self-clearing) to submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting an off-floor transfer from or to the account(s) of an ATP Holder(s).[14] Per proposed Rule 997.1NY(d)(1), the proposed notice must indicate: the Exchange-listed options positions to be transferred; the nature of the transaction; the enumerated provision(s) under proposed Rule 997.1NY(a) pursuant to which the positions are being transferred; the name of the counterparty(ies); the anticipated transfer date; the method for determining the transfer price; and any other information requested by the Exchange. The proposed notice is designed to ensure that the Exchange is made aware of all transfers so that the Exchange can monitor and review such transfers (including the records that must be retained pursuant to proposed Rule 997.1NY(e) (described below) to determine whether they are effected in accordance with the Exchange rules. Additionally, the Exchange believes that requiring notice from the ATP Holder(s) and its Clearing Member(s) would ensure that both parties are in agreement with respect to the terms of the transfer. In light of the notice requirement contained in proposed Rule 997.1NY(d), the Exchange proposes to make a conforming change by deleting paragraph (d) to Rule 957NY, which similarly requires ATP Holders to report to the Exchange any off-floor transactions, and to hold paragraph (d) as Reserved.[15]

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14 This notice provision applies only to transfers involving an ATP Holder's positions and not to positions of non-ATP Holders, as the latter parties are not subject to Exchange rules. In addition, no notice would be required to effect transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1) or transfers of positions from one account to another where no change in ownership is involved pursuant to proposed paragraph (a)(2) of Rule 997.1NY.

15 See Rule 957.NY(d) (providing that "[f]or each transaction in which an ATP

Per proposed Rule 997.1NY(d)(2), however, receipt of prior notice of an off-floor transfer would not constitute a determination by the Exchange that such transfer was effected or reported in conformity with the requirements of proposed Rule 997.1NY. As such, notwithstanding submission of written notice to the Exchange, ATP Holder and Clearing Members that effect off-floor transfers that do not conform to the requirements of the proposed Rule would be subject to appropriate disciplinary action in accordance with the Exchange rules.

Similarly, proposed Rule 997.1NY(e) requires that each party to an off-floor transfer generate and retain records of the information provided in the written notice to the Exchange (pursuant to proposed subparagraph (d)(1)), as well as information regarding the actual Exchange-listed options that are ultimately transferred, the actual transfer date, and the actual transfer price (and the original trade dates, if applicable), and any other information the Exchange may request the ATP Holder or Clearing Member to provide.

Proposed 997.1NY(f) provides exemptions to the prohibition against off-floor transfers, as approved by the Exchange's President or Chief Executive Officer (or his or her designee(s)).[16] Specifically, this provision is in addition to the exemptions (to Rule

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Holder participates off-board (off a participating Exchange) in any option pertaining to an underlying security which is currently approved for Exchange options transactions, such ATP Holder shall report the transaction to the Exchange in a form and manner prescribed by the Exchange. (With the identity of participants removed, such transaction may be made public by the Exchange.)").

16 See ISE Options 6, Section 5(f); MIAX Rule 1326(f). The Exchange notes that, unlike the rules of ISE and MIAX, which refer to "senior level designees," the Exchange proposes to instead reference "designees," which omits the potentially ambiguous "senior" qualifier. The Exchange believes this distinction does not alter the or impede the authority granted in the proposed provision and is consistent with other Exchange rules that provide for delegated authority. See,

997NY) set forth in proposed Rule 997.1NY(a)(1)-(10). The Exchange proposes that the Exchange President or Chief Executive Officer (or his or her designee(s)) may grant an exemption from the requirement of this proposed Rule, on his or her own motion or upon application of the ATP Holder (with respect to the ATP Holder's positions) or a Clearing Member (with respect to positions carried and cleared by the Clearing Members). The President, the Chief Executive Officer, or his or her designee(s), may permit an off-floor transfer if necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances. For example, an exemption may be granted if the market value of the Person's positions would be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or when, in the judgment of the President, the Chief Executive Officer, or his or her designee(s), market conditions make trading on the Exchange impractical.

The Exchange proposes to state that the off-floor transfer procedure set forth in Rule 997.1NY is intended to facilitate non-routine, nonrecurring movements of positions, except for transfers between accounts of the same Person pursuant to proposed subparagraph (a)(2), and is not to be used repeatedly or routinely in circumvention of the normal auction market process.[17]

Lastly, proposed paragraph (h) provides that the off-floor transfer procedure set forth in proposed Rule 997.1NY is only applicable to positions in options listed on the

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e.g., Rule 975NY(k)(3)(A) (proving that the appeals panel to review Obvious Errors or Catastrophic Errors be comprised, in part of, the Exchange Chief Regulatory Officer ("CRO"), or a *designee* of the CRO).

17 See proposed Rule 997.1NY(g).

Exchange; that off-floor transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations; and that off-floor transfers of non-Exchange listed options and other financial instruments are not governed by this proposed Rule 997.1NY.

Proposed Rule 997.2NY: Off-Floor RWA Transfers

The Exchange proposes to adopt Rule 997.2NY titled "Off-Floor RWA Transfers," to facilitate the reduction of risk-weighted assets ("RWA") attributable to open options positions. This proposal is substantively identical to rules on other options exchanges and would align the Exchanges rules with that of its competitors.[18]

SEC Rule 15c3-1 (Net Capital Requirements for Brokers or Dealers) ("Net Capital Rules") requires registered broker-dealers, unless otherwise excepted, to maintain certain specified minimum levels of capital.[19] The Net Capital Rules are designed to protect securities customers, counterparties, and creditors by requiring that broker-dealers have sufficient liquid resources on hand, at all times, to meet their financial obligations. Notably, hedged positions, including offsetting futures and options contract positions, result in certain net capital requirement reductions under the Net Capital Rules.[20]

Subject to certain exceptions, Clearing Members are subject to the Net Capital Rules.[21] However, a subset of Clearing Members are subsidiaries of U.S. bank holding

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18 See, e.g., Cboe Rule 6.8 (Off-Floor RWA Transfers); ISE Options 6, Section 6 (Off-Exchange RWA Transfers).

19 17 CFR 240.15c3-1.

20 In addition, the Net Capital Rules permit various offsets under which a percentage of an option position's gain at any one valuation point is allowed to offset another position's loss at the same valuation point (e.g. vertical spreads).

21 In the event federal regulators modify bank capital requirements in the future, the Exchange will reevaluate the proposed rule change at that time to determine

companies, which, due to their affiliations with their parent U.S.-bank holding companies, must comply with additional bank regulatory capital requirements pursuant to rulemaking required under the Dodd-Frank Wall Street Reform and Consumer Protection Act.[22] Pursuant to this mandate, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation have approved a regulatory capital framework for subsidiaries of U.S. bank holding company clearing firms.[23] Generally, these rules, among other things, impose higher minimum capital and higher asset risk weights than were previously mandated for Clearing Members that are subsidiaries of U.S. bank holding companies under the Net Capital Rules. Furthermore, the new rules do not fully permit deductions for hedged securities or offsetting options positions.[24] Rather, capital charges under these standards are, in large part, based on the aggregate notional value of short positions regardless of offsets. As a result, in general, Clearing Members that are subsidiaries of U.S. bank holding companies must hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules.

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whether any corresponding changes to the proposed rule are appropriate.

22 H.R. 4173 (amending section 3(a) of the Act) (15 U.S.C. 78c(a))).

23 12 CFR 50; 79 FR 61440 (Liquidity Coverage Ratio: Liquidity Risk Measurement Standards).

24 Many options strategies, including relatively simple strategies often used by retail customers and more sophisticated strategies used by broker-dealers, are risk limited strategies or options spread strategies that employ offsets or hedges to achieve certain investment outcomes. Such strategies typically involve the purchase and sale of multiple options (and may be coupled with purchases or sales of the underlying securities), executed simultaneously as part of the same strategy. In many cases, the potential market exposure of these strategies is limited and defined.

The Exchange is concerned with the ability of Market Makers to provide liquidity in their appointed classes. The Exchange believes that permitting market participants to efficiently transfer existing options positions through an off-floor transfer process would likely have a beneficial effect on continued liquidity in the options market without adversely affecting market quality. Liquidity in the listed options market is critically important. The Exchange believes that the proposed rule change provides market participants with an efficient mechanism to transfer their open options positions from one clearing account to another clearing account and thereby increase liquidity in the listed options market. The Exchange currently has no mechanism that firms may use to transfer positions between clearing accounts without having to effect a transaction with another party and close a position.

Proposed Rule 997.2NY provides that, notwithstanding Rule 997NY (described above), existing positions in options listed on the Exchange of an ATP Holder or non-ATP Holder (including an affiliate of an ATP Holder) may be transferred on, from, or to the books of a Clearing Member off the Exchange if the transfer establishes a net reduction of RWA attributable to those options positions (an "RWA Transfer"). Proposed paragraph (a) to Rule 997.2NY provides examples of two transfers that would be deemed to establish a net reduction of RWA, and thus qualify as a permissible RWA Transfer:

- A transfer of options positions from Clearing Member A to Clearing Member B that net (offset) with positions held at Clearing Member B, and thus closes all or part of those positions (as demonstrated in the example below)[25]; and

[25] This transfer would establish a net reduction of RWA attributable to the

- A transfer of options positions from a bank-affiliated Clearing Member to a non-bank-affiliated Clearing Member.[26]

These transfers would not result in a change in ownership, as they must occur between accounts of the same "Person," as defined in Rule 15, per proposed Rule 997.2NY(e).[27] In other words, RWA Transfers may only occur between the same individual or legal entity. These are merely transfers from one clearing account to another, both of which are attributable to the same individual or legal entity. A market participant effecting an RWA Transfer is analogous to an individual transferring funds from a checking account to a savings account, or from an account at one bank to an account at another bank – the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.

For example, Market Maker A clears transactions on the Exchange into an account it has with Clearing Member X, which is affiliated with a U.S-bank holding company. Market Maker A opens a clearing account with Clearing Member Y, which is not affiliated with a U.S.-bank holding company. Clearing Member X has informed Market Maker A that its open positions may not exceed a certain amount at the end of a calendar month, or it will be subject to restrictions on new positions it may open the following month. On August 28, Market Maker A reviews the open positions in its Clearing Member X clearing account and determines it must reduce its open positions to

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transferring Person, because there would be fewer open positions and thus fewer assets subject to Net Capital Rules.

26 This transfer would establish a net reduction of RWA attributable to the transferring Person, because the non-bank-affiliated Clearing Member would not be subject to Net Capital Rules, as described above.

27 See supra note 10 (defining Person).

satisfy Clearing Member X's requirements by the end of August. It determines that transferring out 1000 short calls in class ABC will sufficiently reduce the RWA capital requirements in the account with Clearing Member X to avoid additional position limits in September. Market Maker A wants to retain the positions in accordance with its risk profile. Pursuant to the proposed rule change, on August 31, Market Maker A transfers 1000 short calls in class ABC to its clearing account with Clearing Member Y. As a result, Market Maker A can continue to provide the same level of liquidity in class ABC during September as it did in previous months.

An ATP Holder must "give up" a Clearing Member for each transaction it effects on the Exchange, which identifies the Clearing Member through which the transaction will clear.[28] An ATP Holder that has the ability to change the give up for a transaction within a specified period of time.[29] Additionally, an ATP Holder may change the Clearing Member for a specific transaction.[30] The transfer of positions from an account with one clearing firm to the account of another clearing firm pursuant to the proposed rule change has a similar result as changing a give up or CMTA, as it results in a position

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28 See Rule 961 (Authorizing Give Up of a Clearing Member) (providing process for an ATP Holder (other than a Market Maker) to indicate each of its transactions any OCC number of a Clearing Member through which a transaction will be cleared (i.e., the give up), subject to the criteria set forth in the rule).

29 See Rule 961(g)(1) (providing that, "[i]f the ATP Holder has the ability through an Exchange system to do so, the ATP Holder may change the give up on the trade to another Clearing Member for whom they are an Authorized ATP Holder or to its Guarantor."; which ability "will end at the Trade Date Cutoff Time.").

30 The Clearing Member Trade Assignment ("CMTA") process at OCC facilitates the transfer of option trades/positions from one OCC clearing member to another in an automated fashion. Changing a CMTA for a specific transaction would allocate the trade to a different OCC clearing member than the one initially identified on the trade.

that resulted from a transaction moving from the account of one clearing firm to another, just at a different time and in a different manner.[31]

In the above example, if Market Maker A had initially given up Clearing Member Y rather than Clearing Member X on the transactions that resulted in the 1000 long calls in class ABC, or had changed the give-up or CMTA to Clearing Member Y pursuant to Rule 961 the ultimate result would have been the same. There are a variety of reasons why firms give up or CMTA transactions to certain clearing firms (and not to non-bank affiliate clearing firms) at the time of a transaction, and the proposed rule change provides firms with a mechanism to achieve the same result at a later time.

Proposed paragraph (b) to Rule 997.2NY provides that RWA Transfers may occur on a routine, recurring basis. As noted in the example above, clearing firms may impose restrictions on the amount of open positions. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. Additionally, proposed paragraph (f) to Rule 997.2NY provides that no prior written notice to the Exchange is required for RWA Transfers. Because of the potential routine basis on which RWA Transfers may occur, and because of the need for flexibility to comply with the restrictions described above, the Exchange believes such requirement may interfere with the ability of ATP Holders to comply with any Clearing Member restrictions describe above, and may be burdensome to provide notice for these routine transfers.

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[31] The transferred positions will continue to be subject to OCC rules, as they will continue to be held in an account of an OCC member.

Proposed Rule 997.2NY(c) provides that RWA Transfers may result in the netting of positions. Netting occurs when long positions and short positions in the same series "offset" against each other, leaving no or a reduced position. For example, if there were 100 long calls in one account, and 100 short calls of the same option series were added to that account, the positions would offset, leaving no open positions. Firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. While there are times when a firm may not want to close out open positions to reduce RWA, there are other times when a firm may determine it is appropriate to close out positions to accomplish a reduction in RWA.

In the example above, suppose after making the RWA Transfer described above, Market Maker A effects a transaction on September 25 that results in 1000 long calls in class ABC, which clears into its account with Clearing Member X. If Market Maker A had not effected its RWA Transfer in August, the 1000 long calls would have offset against the 1000 short calls, eliminating both positions and thus any RWA capital requirements associated with them. At the end of August, Market Maker A did not want to close out the 1000 short calls when it made its RWA Transfer. However, given changed circumstances in September, Market Maker A has determined it no longer wants to hold those positions. The proposed rule change would permit Market Maker A to effect an RWA Transfer of the 1000 short calls from its account with Clearing Member Y to its account with Clearing Member X (or vice versa), which results in elimination of those positions (and a reduction in RWA associated with them). As noted above, such netting would have occurred if Market Maker A cleared the September transaction

directly into its account with Clearing Member Y, or had not effected an RWA Transfer in August. Netting provides market participants with appropriate flexibility to conduct their businesses as they see fit while having the ability to reduce RWA capital requirements when necessary.

Proposed Rule 997.2NY(d) provides that RWA Transfers may not result in preferential margin or haircut treatment. Finally, per proposed Rule 997.2NY(g), RWA Transfers may only be effected for options listed on the Exchange, as transfers of non-Exchange listed options and other financial instruments are not governed by proposed Rule 997.2NY, and will be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations (including OCC).[32]

Proposed Rule 997.3NY: In-Kind Exchange of Options Positions and ETF Shares and UIT Units

The Exchange proposes to adopt Rule 997.3NY regarding in-kind exchanges of options positions and exchange-traded fund ("Fund") shares and unit investment trust ("UIT") interests. As discussed further below, the ability to effect "in kind" transfers is a key component of the operational structure of a Fund and a UIT. Currently, in general, Funds and UITs can effect in-kind transfers with respect to equity securities and fixed-income securities. The in-kind process is the means by which assets may be added to or removed from Funds and UITs. The proposed rule change is substantively identical to

[32] All RWA Transfers will be subject to all recordkeeping requirements applicable to ATP Holders and Clearing Members under the Act, such as Rule 17a-3 and 17a-4.

rules on other options exchanges and would align the Exchanges rules with that of its competitors.[33]

Proposed Rule 997.3NY would add a circumstance under which off-floor transfers of options positions would be permitted to occur, in addition to the circumstances in proposed Rules 997.1NY and 997.2NY. Specifically, Rule 997.3NY would allow positions in options listed on the Exchange to be transferred off the Exchange by an ATP Holder in connection with transactions (a) to purchase or redeem "creation units" of Fund Shares between an "authorized participant"[34] and the issuer[35] of such Fund Shares[36] or (b) to create or redeem units of a UIT between a broker-dealer and

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33 See NYSE Arca Rule 6.78A-O and Cboe Options Rule 6.9 (except that the Cboe rule does not include a notice provision related to the transfers that is contained in Rule 6.78A-O(b) and proposed Rule 997.2NY(b)). See also Securities and Exchange Act Release No. 90552 (December 2, 2020), 85 FR 79049 (December 8, 2020) (SR-NYSEArca-2020-102) (immediately effective filing to adopt Rule 6.78A-O to allow in-kind exchange of options positions and ETF Shares and UIT Units).

34 The Exchange is proposing that, for purposes of proposed Rule 997.3NY, the term "authorized participant" would be defined as an entity that has a written agreement with the issuer of Fund Shares or one of its service providers, which allows the authorized participant to place orders for the purchase and redemption of creation units (i.e., specified numbers of Fund Shares). See proposed Rule 997.3NY(a)(1). While an authorized participant may be an ATP Holder and directly effect transactions in options on the Exchange, an authorized participant that is not an ATP Holder may effect transactions in options on the Exchange through an ATP Holder on its behalf.

35 The Exchange proposes that, for purposes of proposed Rule 997.3NY, any issuer of Fund Shares would be registered with the Commission as an open-end management investment company under the Investment Company Act of 1940 (the "1940 Act"). See proposed Rule 997.3NY(a)(2).

36 A Fund Share is a share or other security traded on a national securities exchange and defined as an NMS stock, as set forth in in Rule 600(b)(47) of Regulation NMS, which includes open-end management investment companies registered with the Commission. See Rule 915, Commentary .06.

the issuer[37] of such UIT units, which transfers would occur at the price used to calculate the net asset value ("NAV") of such Fund Shares or UIT units, respectively. Allowing the Exchange to permit off-floor transfers of options positions in connection with the creation and redemption process would enable the Exchange to compete with other options exchanges that allow such transfers.

However, the Exchange believes it is appropriate to include in proposed Rule 997.3NY(b) the requirement that ATP Holders that engage in such transfers "must, upon request of the Exchange, provide to the Exchange information relating to the transfers in a form and manner prescribed by the Exchange." The Exchange notes that this proposed provision is identical to the notice provision in NYSE Arca Rule 6.78A-O(b), and, like that provision, would help ensure that ATP Holders keep accurate books and records relating to such transfers for review by the Exchange, which is to the benefit of all market participants.

The Exchange's proposal mirrors other exchange rules in that applies solely in the context of transfers of options positions effected in connection with transactions to purchase or redeem creation units of Fund Shares between Funds and authorized participants,[38] and units of UITs between UITs and sponsors. Other than the transfers

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37 The Exchange proposes that, for purposes of proposed Rule 997.3NY, any issuer of UIT units would be a trust registered with the Commission as a unit investment trust under the 1940 Act. See proposed Rule 997.3NY(a)(3).

38 See supra note 34. The term "authorized participant" is specific and narrowly defined. As noted in the Investment Company Act Release No. 33140 (June 28, 2018), 83 FR 37332 (July 31, 2018) (the "Proposed ETF Rule Release"), the requirement that only authorized participants of a Fund may purchase creation units from (or sell creation units to) a Fund "is designed to preserve an orderly creation unit issuance and redemption process between [Funds] and authorized participants." Furthermore, an "orderly creation unit issuance and redemption process is of central importance to the arbitrage mechanism." See Proposed ETF

covered by the proposed rule, transactions involving options, whether held by a Fund or an authorized participant, or a UIT or a sponsor would be fully subject to all applicable Exchange trading rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[39] in general, and furthers the objectives of Section 6(b)(5) of the Act,[40] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. As a general matter, the proposed rules are substantively identical to rules on other options exchanges and would align the Exchanges rules with that of its competitors. As such, this proposal would benefit investors by reducing the administrative burden of determining whether their off-floor transfers comply with multiple sets of options exchange rules.

Proposed Rule 997NY: Transactions Off the Exchange

In particular, the Exchange believes proposed Rule 997NY is consistent with the Act, because it adopts provisions in the Rules specifically required by Rules 19c-1 and

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Rule Release at 83 FR 37348.

39 15 U.S.C. 78f(b).

40 15 U.S.C. 78f(b)(5).

19c-3 under the Act, setting forth the Exchange's general prohibition against off-floor transfers. The proposed rule change will add transparency to the Exchange rules, which would benefit investors. In addition, as noted herein, proposed Rule 997NY is substantively identical to the rules of at least one other options exchange and would therefore allow the Exchange to compete on equal footing.

Proposed Rule 997.1NY: Off-Floor Transfer of Positions

The Exchange believes that permitting off-floor transfers in very limited circumstances would allow ATP Holders to accomplish certain goals efficiently. Proposed Rule 997.1NY is also substantively identical to the rules of other options exchanges and, consistent with those rules, the proposed rule permits non-recurring off-floor transfers in situations involving dissolutions of entities or accounts, for purposes of donations, mergers or by operation of law. As noted above for example, an ATP Holder that is undergoing a structural change and a one-time movement of positions may require a transfer of positions or an ATP Holder that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, an ATP Holder may require a transfer of positions to make a capital contribution. The above-referenced circumstances are non-recurring situations where the transferor continues to maintain some ownership interest or manage the positions transferred. By contrast, repeated or routine transfers between entities or accounts – even if there is no change in beneficial ownership as a result of the transfer – is inconsistent with the purposes for which the proposed rule will be adopted. Accordingly, such activity would not be permitted under the proposed rule. The proposed rule change would provide market participants that experience these limited, non-recurring events with an efficient and effective means to

transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices would provide market participants with flexibility to determine the price appropriate for their business, which maintain cost bases in accordance with normal accounting practices and removes impediments to a free and open market.

The proposed rule change which requires notice and maintenance of records would ensure the Exchange is able to review off-floor transfers for compliance with the Exchange rules, which prevents fraudulent and manipulative acts and practices. The requirement to retain records is consistent with the requirements of Rule 17a-3 and 17a-4 under the Act.

Similar to the rules of other options exchanges, the Exchange would permit a presidential exemption.[41] The Exchange believes that this exemption is consistent with the Act because the Exchange's Chief Executive Officer or President (or his or her designee(s)) would consider an exemption in very limited circumstances (i.e., to facilitate non-routine, nonrecurring movements of positions not designed to circumvent the normal auction market process). Proposed Rule 997.1NY(f) specifically provides that the Exchange's Chief Executive Officer or President (or his or her designee(s)) may in his or her judgment allow an off-floor transfer if it is necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances such as the market value of the Person's positions will be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, when in

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41 See ISE Options 6, Section 5(f); MIAX Rule 1326(f). See also Cboe Rule 6.8(f).

the judgment of the President, Chief Executive Officer, or his or her designee(s), market conditions make trading on the Exchange impractical. These standards within paragraph (f) of the proposed rule are intended to provide guidance concerning the use of this exemption to the benefit of investors and the investing public for the maintenance of a fair and orderly market and the protection of investors and is in the public interest.

Finally, the Exchange believes the conforming change to delete paragraph (d) to Rule 957NY in light of the comparable notice requirement in proposed Rule 997.1NY(d) would reduce redundancy, add clarity, transparency and internal consistent to Exchange rules.

Proposed Rule 997.2NY: Off-Floor RWA Transfers

The Exchange believes proposed Rule 997.2NY to permit RWA Transfers, which is substantially the same as the rules of other options markets, would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing liquidity in the listed options market. The Exchange believes providing market participants with an efficient process to reduce RWA capital requirements attributable to open positions in clearing accounts with U.S. bank-affiliated clearing firms may contribute to additional liquidity in the listed options market, which, in general, protects investors and the public interest.

The proposal to permit RWA Transfers to occur on a routine, recurring basis and result in netting, also provides market participants with sufficient flexibility to reduce RWA capital requirements at times necessary to comply with requirements imposed on them by clearing firms. This would permit market participants to respond to then-current market conditions, including volatility and increased volume, by reducing the RWA

capital requirements associated with any new positions they may open while those conditions exist. Given the additional capital that may become available to market participants as a result of the RWA Transfers, market participants would be able to continue to provide liquidity to the market, even during periods of increased volume and volatility, which liquidity ultimately benefits investors. It is not possible for market participants to predict what market conditions will exist at a specific time, and when volatility will occur. The proposed rule change to permit routine, recurring RWA Transfers (without any required prior written notice) would provide market participants with the ability to respond to these conditions whenever they occur. Permitting such transfers on a routine, recurring basis will provide market participants with the flexibility to comply with applicable restrictions when necessary to avoid position limits on future options activity. In addition, with respect to netting, as discussed above, firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. Netting may otherwise occur with respect to a firm's positions if it structured its clearing accounts differently, such as by using a universal account. Therefore, the proposed rule change will permit netting while allowing firms to continue to maintain different clearing accounts in a manner consistent with their businesses.

The Exchange recognizes the numerous benefits of executing options transactions on exchanges, including price transparency, potential price improvement, and a clearing guarantee. However, the Exchange believes it is appropriate to permit RWA Transfers to occur off the Exchange, as these benefits are inapplicable to RWA Transfers, which are narrow in scope and intended to achieve a limited beneficial purpose. RWA Transfers are

not intended to be a competitive trading tool. There is no need for price discovery or improvement, as the purpose of the transfer is to reduce RWA asset capital requirements attributable to a market participants' positions. Unlike trades on an exchange, the price at which an RWA Transfers occurs is immaterial – the resulting reduction in RWA is the critical part of the transfer. RWA Transfers will result in no change in ownership, and thus they do not constitute trades with a counterparty (and thus eliminating the need for a counterparty guarantee). The transactions that resulted in the open positions to be transferred as an RWA Transfer were already guaranteed by a Clearing Member, and the positions will continue to be subject to OCC rules, as they will continue to be held in an account with a Clearing Member. The narrow scope of the proposed rule change and the limited, beneficial purpose of RWA Transfers make allowing RWA Transfers to occur off the floor appropriate and important to support the provision of liquidity in the listed options market.

The proposed rule change does not unfairly discriminate against market participants, as all ATP Holders and non-ATP Holders with open positions in options listed on the Exchange may use the proposed off-floor transfer process to reduce the RWA capital requirements of Clearing Members. Finally, this proposed rule change would align Exchange rules with those of other options exchanges, thereby allowing the Exchange to compete on equal footing.

Proposed Rule 997.3NY: In-Kind Exchange of Options Positions and ETF Shares and UIT Units

The Exchange believes proposed Rule 997.3NY to permit off-floor transfers in connection with the in-kind Fund and UIT creation and redemption process would promote just and equitable principles of trade as it would permit Funds and UITs that

invest in options traded on the Exchange to utilize the in-kind creation and redemption process that is available for Funds and UITs that invest in equities and fixed-income securities.

The Exchange believes it is appropriate to require ATP Holders that engage in off-floor transfers as provided in proposed Rule 997.3NY(b) to keep records of such transactions such that this information could be shared with the Exchange upon request. The Exchange believes this provision, which is identical to NYSE Arca Rule 6.78A-O(b), would prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade because the provision would help ensure that ATP Holders keep accurate books and records relating to such transfers for review by the Exchange, which is to the benefit of all market participants. Finally, this proposed rule change would align Exchange rules with those of other options exchanges, thereby allowing the Exchange to compete on equal footing.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[42] The proposed rules are not intended to be competitive trading tools, but rather to set forth the general prohibition against off-floor transactions and to facilitate certain off-floor transactions in limited circumstances that meet the enumerated criteria.

The Exchange does not believe the proposed rule change regarding off-floor position transfers set forth in the proposed rules would impose an undue burden on intra-

42 15 U.S.C. 78f(b)(8).

market competition as the transfer procedure(s) may be utilized by any ATP Holder and the rule would apply uniformly to all ATP Holders. Use of each off-floor transfer procedure is voluntary and all ATP Holders may use each such procedure to transfer positions as long as the criteria in the proposed rule are satisfied.

The Exchange does not believe the proposed rule change will impose an undue burden on inter-market competition. As indicated above, it is intended to provide an additional clearly delineated and limited circumstance in which options positions can be transferred off an exchange (as well as to set forth the general prohibition against such transfers). Additionally, as discussed above, the proposed rule change is substantively identical to the rules of other options exchanges and would allow the Exchange to compete on equal footing. Moreover, the Exchange believes having similar rules related to off-floor position transfers to those of other options exchanges will reduce the administrative burden on market participants of determining whether their transfers comply with multiple sets of rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[43] and Rule 19b-4(f)(6) thereunder.[44] Because the proposed

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43 15 U.S.C. 78s(b)(3)(A)(iii).

44 17 CFR 240.19b-4(f)(6).

rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder. [45]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[46] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form

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45 15 U.S.C. 78s(b)(3)(A)(iii). Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange satisfied this requirement.

46 15 U.S.C. 78s(b)(2)(B).

(http://www.sec.gov/rules/sro.shtml); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2022-36 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAMER-2022-36. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAMER-2022-36 and should be submitted on or before **[INSERT**

DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022-19226 Filed: 9/6/2022 8:45 am; Publication Date: 9/7/2022]

[47] 17 CFR 200.30-3(a)(12).